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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

APPLICANT : MAGNUS-MILLER ET AL. EXAMINER :  
SERIAL NO : 10/075,929 ART UNIT :  
FILED : FEBRUARY 13, 2002 PAPER NO :  
FOR : ANALGESIC COMPOSITIONS COMPRISING ANTI-  
EPILEPTIC COMPOUNDS AND METHODS OF USING SAME

PETITION UNDER 37 C.F.R. § 1.53(e)(2)

Adjustment date: 08/22/2002 AKELLEY  
04/25/2002 BABRAHA1 00000024 230455 10075929  
01 FC:122 130.00 CR

April 22, 2002

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Commissioner for Patents  
Washington, D.C. 20231

OFFICE OF PETITIONS

Dear Sir:

This paper is a petition pursuant to 37 C.F.R. § 1.53(e)(2) in response to a NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION filed under 37 CFR 1.53(b) dated March 22, 2002, confirmation number 9855 ("NOTICE"), in United States Application serial number ("USSN") 10/075,929, filed February 13, 2002, which is a divisional application of parent application USSN 09/463,116, filed January 18, 2000, which claims benefit of priority from PCT International application number PCT/US98/17083 filed August 18, 1998, and United States Provisional Application number 60/058,207, filed September 8, 1997.

THE PETITION:

Applicants hereby petition the Commissioner for Patents to remove the requirements made in the NOTICE of submission of the drawings under 35 U.S.C. §113 (first sentence) and a newly executed oath or declaration covering the drawings, and to

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accord a filing date for the subject application which is the date the application was received by the United States Patent and Trademark Office, namely February 13, 2002.

Applicants hereby request a refund of the petition fee.

### **REMARKS**

Nonprovisional patent application number 10/075,929, was filed without drawings on February 13, 2002. A NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION filed under 37 CFR 1.53(b) dated March 22, 2002, confirmation number 9855 (COPY ENCLOSED) was received by Applicant.

### ***NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION***

#### ***Filed Under 37 CFR 1.53(b)***

The NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION filed under 37 CFR 1.53(b) dated March 22, 2002, confirmation number 9855, stated that a “filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.”

- “All of the items noted below and a newly executed oath or declaration covering the items must be submitted within TWO MONTHS of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e))”; and
- The “application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing “where necessary for the understanding of the subject matter sought to be patented. Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).”

The instant application is directed to a combination of an effective amount of at least one anti-epileptic compound having pain alleviating properties and an effective

amount of at least one compound selected from the group consisting of NMDA receptor antagonists, NSAIDs, and analgesics. Further, the instant application is directed to a combination of pharmaceutically acceptable compounds, to methods of using the combinations, and to pharmaceutical compositions comprising the combinations.

The drawings referenced in the NOTICE are graphs labelled "FIG-1" and "FIG-2" (COPIES ENCLOSED) that plot "Paw Flick Latency (sec)" on the Y-axis against "Dose (mg/kg i.g.)" on the X-axis for the compounds gabapentin alone, naproxen alone, and a combination of gabapentin with naproxen, wherein ratio of doses of gabapentin and naproxen is 1-to-1 in Figure 1 and 50-to-1, respectively, in Figure 2. The information provided graphically in Figures 1 and 2 is also provided in tabular form in Table 1 on page 10, and described on page 9, at lines 18-28, in the specification.

The omitted drawings do not depict the instant invention, but simply graphically illustrate experimental data. The experimental data is also described and provided in the specification in tabular format, which describes clearly and fully what is depicted graphically by the omitted drawings. The omitted drawings are thus not necessary for the understanding of the instant subject matter for which Applicants seek a patent. Further, the nature of the instant subject matter for which Applicants seek a patent does not admit of illustration by a drawing.

The drawings of Figures 1 and 2 are thus unnecessary under 35 U.S.C. 113, first sentence, or for that matter 35 U.S.C. 113, second sentence, for a filing date. Further, if the drawings are unnecessary under 35 U.S.C. 113 (first sentence) for a filing date, then the related requirement in the NOTICE for submission of a newly executed oath or declaration covering the items (i.e., drawings) is unnecessary also.

Accordingly, Applicants hereby request the Commissioner for Patents to grant the above petition and remove the requirements made in the NOTICE of submission of the drawings under 35 U.S.C. §113 (first sentence) and a newly executed oath or declaration

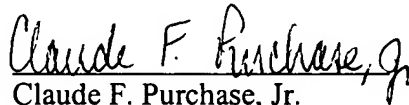
covering the drawings, and accord a filing date for the subject application which is the date the application was received by the USPTO, namely February 13, 2002.

Applicants further request a refund of the petition fee in view of the above remarks and petition.

The Commissioner of Patents and Trademarks is hereby authorized to charge any payment of fees required for this communication, or credit any overpayment of fees, to deposit account 23-0455.

The undersigned would welcome a telephone call from the Commissioner to discuss any matters.

Respectfully submitted,



Claude F. Purchase, Jr.

Reg. No. 47,871

Warner-Lambert Company

2800 Plymouth Road

Ann Arbor, MI 48105

Tel. (734) 622-1692

Fax (734) 622-1553